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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.56 OF 2014

Navbharat Enterprises Ltd. ..Appellant
-*Versus*-
The Commissioner of Customs(Import) ..Respondent

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Mr. V. Sridharan, Senior Counsel, a/w Prakash Shah i/b. M/s. PDS Legal for the Appellant.
Mr. S. S. Pakale for the Respondent.

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CORAM: S.C. DHARMADHIKARI
AND
S. P. DESHMUKH, JJ.

DATE :- 16th FEBRUARY, 2015.

P.C.:

This Appeal of the Assessee is questioning the legality and validity of an order passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai, dated 19th November, 2013.

2] There was an application filed by the Assesee seeking condonation of delay. The Assessee narrated that he was not served with an order of adjudication dated 22nd June, 2000. However, what he came to know on 6th April, 2011 was that an adjudication order has been passed. However, a copy thereof could be obtained only when the Assessee corresponded with the authorities under the Right to Information Act, 2005. He, therefore, obtained a copy of the order on 13th September, 2011. Therefore, there was a delay of 266 days in filing of the Appeal and the same deserves to be condoned in the peculiar facts and circumstances. More so, when the unit was closed and there were no records available with the Assessee – Applicant before the Tribunal.

3] The Revenue submitted that the show cause notice based on which the Order in Original/adjudication order was passed, was duly served. That packet was received back with the postal remark “not claimed”. Thereafter, the adjudication order was also issued on the address available in the official record. That packet was returned with the postal remark “refused”. If this is how the Assessee approached the matter, then, the delay is 12 years and more. The Assessee was negligent and callous and hence, the application for condonation of delay was rightly dismissed.

4] The Tribunal has noted that there is no cause much less reasonable and satisfactory as the show cause notice and adjudication order were duly served. The postal remarks and which have been relied upon by the Revenue are true and correct. In such circumstances, it refused to exercise its discretion in favour of the Assessee and dismissed the application.

5] In the light of the rival contentions, we are of the view that this Appeal raises substantial questions of law. The questions are formulated as under:-

> “(a) Whether in the facts and circumstances of the case, the impugned order dated 19.11.2013 passed by the CESTAT is sustainable in law?
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> (b) Whether in the facts and circumstances of the case, the CESTAT vide order dated 19.11.2013 was correct in holding that there was indeed a delay in filing the Appeal?”

6] Mr. Sridharan, learned Senior Counsel, has taken us through the entire paper book to submit that the information obtained under the Right to Information Act reveals that the copy of the adjudication order was served not when it was passed or within a reasonable time thereafter but in April 2011. The record which has been relied upon by the Tribunal does not indicate that the postal authorities have endorsed a remark “not claimed” on the packet containing the show cause notice. Similarly, it has not recorded any endorsement on the copy of the adjudication order, that it was duly dispatched but “refused” by the Assessee. Thus, a adjudication order may have been passed but it remained uncommunicated.

7] Even the Tribunal, therefore, does not refer to the delay of more than 12 years and as claimed by the Revenue. It refers to the period of delay as of 266 days. That it relies on the fact that even after obtaining the information and receiving the copy of the adjudication order, the Assessee failed to file the Appeal in time. Thus, this delay has not been satisfactorily explained.

8] We are of the opinion that if there was doubt and which could be inferred from the records and information provided to the Assessee by the Revenue after he invoked the Right to Information Act, 2005, then, the Tribunal should have condoned the delay and in all fairness and in the interest of justice. Eventually if the Assessee cannot be faulted for being negligent or reckless in pursuing the remedy, then, the delay could have been condoned by compensation of payment of costs.

9] In the circumstances, this Appeal is allowed. The impugned order is quashed and set aside. The delay of 66 days is condoned in the peculiar facts and circumstances but by directing that the Appellant-Assessee before us, shall pay costs quantified at Rs.25,000/- within a period of four weeks from the receipt of copy of this order. If these costs are paid and the proof is produced, the Tribunal shall restore the Appeal, register it and hear and dispose of the same on merits and in accordance with law. All contentions of both sides are kept open.

(S. P. DESHMUKH, J.) **(S.C. DHARMADHIKARI, J.)**

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